

Q&A with...



Kenneth KryS, Founder and CEO, KRyS Global, Cayman Islands

The IFC Economic Report speaks to Kenneth KryS about the effects that the global financial crisis has had on the asset recovery industry within IFCs.

IFC What effect had the global financial crisis on business for KRyS Global?

KK: *That is an interesting question. Business has increased in KRyS Global but not necessarily for the reasons one might think. Onshore the crisis caused companies to become insolvent and thus created more work for bankruptcy professionals. This wasn't the case for insolvency practitioners in IFCs however. Here the crisis caused a greater need for liquidity and more in depth due diligence and investigation of investments. This in turn led to a number of frauds and instances of mismanagement being identified, which often found themselves in the hands of IFC insolvency practitioners.*

IFC Last year you opened your first European office. What attracted you to Guernsey?

KK: *We were looking for jurisdictions outside of the Caribbean that would be receptive and interested in the KRyS Global approach and the services we provide were currently not available in the marketplace. Guernsey (and the Channel Islands generally) has traditionally dealt with fraud and disputes from a pure bankruptcy and administration perspective, with insolvency practitioners charging hourly rates for work and an inflexible approach to risk. We came to this willing to be less rigid and providing a different approach. I think the marketplace sees us as a distinct alternative and while it may not work*

in all circumstances, our presence offers an alternative for providing value and supporting clients.

IFC As the services of IFCs become ever more increasingly interconnected, have you seen a rise in the number of cross border insolvency cases?

KK: *I don't think we've seen a dramatic shift in the number of cross border cases. IFC insolvencies have been historically and fundamentally cross border. You only need to look back to BCCI, a case I was involved with in the 1990s to see the depth and reach of a cross border case. However there has been a significant shift in the mentality of onshore and other offshore jurisdictions to be more receptive and accommodating to providing cross border assistance to IFC IPs. Most notably this can be seen in how the US Bankruptcy Court considers applications under Chapter 15. We've seen similar positive contributions in decisions rendered recently in Cayman and BVI.*

IFC How do 'offshore' insolvency cases differ from those in 'onshore' jurisdictions & what challenges do they pose?

KK: *Offshore insolvencies are substantially different from their onshore counterparts. There is no 'brick and mortar' offshore. One frequently faces situations where little is known about the business and history, of the entity's assets because documents and information are often located elsewhere.*

The first step is to identify and decide how best to collect the data and assets. If a fraud has occurred, which is often the case, there's the extra layer of complexity caused by the potential risk of destruction of the documents or dissipation of the assets. Generally speaking therefore offshore insolvencies tend to be more complex and require different skills and experience to pursue.

IFC Does the wide spread adoption of technology make asset recovery easier or more difficult?

KK: *I think insolvency practitioners are always playing a bit of catch up trying to keep up with the latest techniques employed by fraudsters to conceal assets and ensuring they have the most up-to-date tools in-house to chase down and recover assets. Our firm have invested significantly in technology based investigation tools and have found an increased demand recently for this in the IFCs as more organizations and the litigation that takes place gets more global with greater complexity.*

IFC When an entity is being wound up, what benefits are there in appointing an independent insolvency practitioner?

KK: *We at KRyS Global look frequently at insolvency as one of the weapons in our arsenal for investigating fraud and pursuing asset recovery. Compulsory insolvencies give practitioners access to a broad range of powers and remedies, including the power to examine individuals and demand*

documents. Also IPs can seek recognition onshore so that their powers are recognised there as well. With such recognition there may be further benefits, such as a stay of proceedings against the estate, discovery, an automatic toll to investigate claims, and certain causes of action not otherwise available. These in turn offer greater opportunities for success and recoveries to victims of fraud.

IFC At the recent OffshoreAlert Conference you mentioned that company directors are not always the most ideal candidates to pursue in the courts when recovering assets, what are the reasons for this?

KK: In IFCs, unless the law specifically states to the contrary, most directors enjoy indemnification under the entity's articles and memorandum of association. These indemnities usually protect the directors from any claims other than gross negligence or gross misconduct. The implication of this is that unless there is proof of a fraud, a claim against the directors is unlikely to succeed. To further compound the issue, often the largest asset the director has is his D&O coverage which frequently have a carve out for fraud. You are then left to pursue the director's personal assets, which often are litigation proof or put out of the reach of creditors. This makes them less than an ideal candidate for a potential asset recovery.

IFC In what has become an increasingly global business, how important is it for a firm to have local knowledge & experience when dealing with cross border matters?

KK: Local knowledge and experience is still fundamental when fighting fraud and pursuing assets. I tell potential clients and service providers that the difference between KRyS Global and other firms is that we live and breathe offshore. It's all we do. We know which service providers are best for what situation, what the courts and regulators expect, and how best to get information and assets in less than ideal situations. This means that when you decide to spend hard earned cash to pursue a claim, you're getting the very best chance for success.

IFC KRyS Global is renowned for its activities in high profile cases such

as the Madoff scandal, with an ever increasing focus on regulation. Do you anticipate more or less of these kind of cases?

KK: I don't believe that increased regulation leads to more scandals being unearthed. A lot of the big frauds in recent history were disclosed outside the regulatory regime, by factors such as tightening liquidity, brought about by the GFC. I expect that to continue in the future.

IFC What trends do you see in 2013 in terms of insolvency and asset recovery?

KK: Onshore taxes and tax liabilities will play a greater role in IFCs and new law and opportunities will arise where these are involved. We at KRyS Global have seen this first hand with a recent personal bankruptcy appointment in the Cayman Islands involving a sizable tax liability in the US.

I see alternatives to contentious work being explored more. There are still a lot of funds out there with 2008 issues. Formal insolvencies are not particularly attractive in these cases. We're seeing service providers looking for different approaches and remuneration packages to these situations.

Corporate governance will also continue to be in the headlines. The recent CIMA survey confirmed the increasing importance that investors and service providers put on having quality directors in place and ensuring they have the time and resources to direct and manage funds.

IFC Recent research from Professor Sharman indicated that best practice anti-money laundering (AML) and know your customer (KYC) processes are more stringently upheld in offshore locations such as the Cayman Islands, despite this criticism of the 'offshore' industry is widespread in the media. Do you think that 'onshore' jurisdictions are getting off lightly?

KK: This is something we in the offshore world have known for a number of years.

The lack of a level playing field is evident when one just compares what is necessary to incorporate a company in Delaware versus an IFC. The problem appears that no member of FATF is willing to sanction or pressure another member if they do not meet the standards they have set for themselves. To that extent, it does seem unfair for IFCs to be required to meet higher standards or risk sanction or public humiliation.

IFC In this issue we have looked at the need for IFCs to work together, how important is this for insolvency matters, do you believe other IFCs should collaborate more?

KK: In our line of work, in particular as insolvency practitioners in IFCs, cross border cooperation is critical to our success. With the expansion of law firms and IPs to a number of the developed IFCs, we've seen a greater consistency in the expectations and product available to clients. I know there is a great amount of respect globally for a number of the judiciary in the IFCs and the quality decisions they render. I think it would be nice if they communicated with each other more and share ideas and experiences. This could only make the IFCs better.

IFC In your experience of dealing with contentious cases, can and should morality be applied to corporate tax planning?

KK: To me personally I think this has pushed the burden onto the IFCs to make up for the wrongs and errors of the onshore jurisdictions. It is evident that the issue is that the tax laws onshore create an atmosphere where taxpayers are willing to risk extreme sanction and possibly jail to avoid paying taxes. If they kept the laws simple and didn't create loopholes, this 'morality' wouldn't be needed. Furthermore where does one draw the line on this? It seems that simply having a country with a lower tax rate can be construed as morally improper. That clearly is not fair.

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